

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF MARYLAND
3 NORTHERN DIVISION
4 -----X
5 DANA LYNN RIDGE, et al.,)
6 Plaintiffs)
7 V) Case No.
8 DYNASPLINT SYSTEMS, INC.,) 1:14-CV-00378 GLR
9 Defendants)
10 -----X

11
12 Deposition of GEORGE HEPBURN
13 Baltimore, Maryland
14 Tuesday, November 18, 2014
15 9:12 a.m.

16
17
18
19
20
21
22
23 Job No.: 69728
24 Pages: 1 - 187
25 Reported by: Dianna C. Kilgalen, RPR.

1 signature on it?

2 A. I don't recall that they did that.

3 Q. At any time, did MidCap withdraw its
4 commitment?

5 MR. SHAFFER: Objection to the word
6 withdraw. You can answer. You can answer,
7 Mr. Hepburn.

8 A. Okay. I don't believe they ever really
9 totally withdrew it ever.

10 BY MR. TUFTS:

11 Q. Did they ever indicate to you they were
12 withdrawing the commitment?

13 A. They made a conditional -- they added a
14 condition to moving forward.

15 Q. But they never said to you: We are
16 withdrawing our commitment?

17 MR. SHAFFER: Did they ever use that
18 word?

19 A. They did and they didn't. I don't
20 remember. I mean, it was kind of vague, because
21 they came right back and said they would continue
22 onward if I could just get one thing done.

23 (Whereupon, Hepburn Deposition Exhibit 6
24 was marked for identification.)

25 MR. TUFTS: What has been marked as

1 Exhibit 6 is a one-page document stamped D 1144,
2 and e-mail chain dated June 19th, 2013, from you to
3 Michael Ciatto with a copy to Bonnie Maisel.

4 A. Bonnie Maisel.

5 BY MR. TUFTS:

6 Q. Maisel. Do you recognize this document?

7 A. Sure.

8 Q. Did you send it?

9 A. Most likely.

10 MR. TUFTS: After you have read it,
11 please let me know when you have finished.

12 THE WITNESS: Okay. I have read it.

13 Q. Directing your attention to the first
14 paragraph, it says: Thanks for the heads-up
15 yesterday. Do you see that?

16 A. Yes.

17 Q. What are you referring to there?

18 A. I don't recall.

19 Q. Do you recall having a conversation with
20 Mr. Ciatto on June 18th?

21 A. No.

22 Q. Do you recall Mr. Ciatto ever
23 communicating to you a decision on moving forward
24 that you reference in the last sentence of that
25 first paragraph?

1 A. Could you repeat the question?

2 Q. Do you recall Mr. Ciatto communicating to
3 you a decision on moving forward as referenced in
4 the last sentence of the first paragraph?

5 A. Yeah. I thought they were moving forward
6 at this point.

7 Q. Okay. Well, what I'm asking about is had
8 Mr. Ciatto communicated to you a decision on moving
9 forward prior to this e-mail?

10 A. A conditional decision, yes.

11 Q. What was that conditional decision?

12 A. I believe that we get a settlement offer
13 from the DOJ.

14 Q. Did he tell you what -- did he express a
15 dollar value that would be acceptable?

16 A. I believe he did.

17 Q. What was that dollar value?

18 A. He had a dollar value of about three to
19 four million.

20 Q. He said if DSI could settle the DOJ
21 lawsuit or the qui tam action for -- I'm sorry --
22 did you say three to four million?

23 A. Three to four million.

24 Q. -- three to four million, then MidCap
25 could move forward on the refinancing deal?

1 A. Yes. It was either he or Garrett
2 Fletcher.

3 Q. That was prior to June 19th, 2013?

4 A. Yes.

5 Q. Do you know approximately when?

6 A. I think it was April or May that they
7 said that. It would have been mainly Garrett
8 Fletcher at that point.

9 Q. But you don't recall Mr. Ciatto
10 communicating to you a decision on moving forward
11 on June 18th specifically?

12 A. A decision? What do you mean?

13 Q. It's in your e-mail, a decision on moving
14 forward that you reference in that last sentence.
15 Do you see it? It says: Frankly I believe it may
16 influence our decision on moving forward.

17 A. Right. I don't know what that means.

18 Q. The reason I'm asking is because you
19 referenced an April discussion with Mr. Fletcher --

20 A. Right.

21 Q. -- in which he said if it settled, the
22 qui tam lawsuit, for three to four million, then
23 MidCap could move forward with the refinancing.

24 A. Right. Right.

25 Q. And I guess what I'm asking about is any

1 decision between the time of that communication
2 with Mr. Fletcher and this e-mail.

3 A. They wanted to have the lawsuit settled.

4 Q. Did you communicate the dollar figure
5 that they would deem acceptable for a settlement to
6 BB&T?

7 A. No. I don't think so.

8 Q. Why not?

9 A. Why would I involve them in the lawsuit?

10 Q. I'm just asking if you were advising them
11 of the status of the settlement negotiations.

12 MR. SHAFFER: Well, at what point in time
13 are you -- your question --

14 MR. TUFTS: You are right. Let's start
15 with the first -- let's start back in April, when
16 Mr. Fletcher informed you that the qui tam action
17 would have to be settled for three to four million
18 in order for them to move forward with the
19 refinancing deal.

20 THE WITNESS: Right.

21 BY MR. TUFTS:

22 Q. At that time or any time thereafter, did
23 you convey that communication to BB&T?

24 A. I don't recall.

25 Q. Was DSI under an obligation to

1 communicate to BB&T the status of the qui tam
2 lawsuit?

3 A. I believe I was.

4 Q. You referred to it as a conditional
5 decision. MidCap would only move forward with the
6 refinancing if the qui tam action could be settled
7 for three to four million dollars, correct?

8 MR. SHAFFER: Objection to the form of
9 the question. I think your question is a little
10 bit ambiguous. Because if you are referring to the
11 April conversation, that would have been prior to
12 the issuance of a formal commitment letter.

13 So your question implies that there was
14 some condition prior to the issuance of the
15 commitment letter that somehow attached to the
16 commitment itself, and I think that's not the case.

17 So your question is a little imprecise in
18 that regard. Do you get my point?

19 MR. TUFTS: Okay. I do. It's well
20 taken.

21 MR. SHAFFER: Okay. Now, you know, I
22 think, because we produced evidence of this in
23 discovery, that MidCap was performing its due
24 diligence in the spring of 2013, prior to the
25 issuance of its commitment letter on June 14th.

1 briefly. Just looking at the first couple pages, does
2 this refresh your memory about whether or not this is
3 the message you left on August 3rd?

4 MR. SHAFFER: Objection to the form of the
5 question. I don't think he can say whether this is the
6 message he left, because that would require him to know
7 whether the transcript is accurate with the tape.

8 If you want to ask him does this transcript
9 refresh his recollection as to whether he communicated
10 using the voicemail exchange on August 3rd, you can ask
11 him that question.

12 But I don't think you can ask him, based on
13 this transcription, whether this is the conversation
14 that he had with the voicemail exchange on August 3rd.

15 MR. TUFTS: Can we go off the record?

16 (Thereupon, there was a recess taken at
17 11:31 a.m.)

18 (Thereupon, the proceedings were resumed at
19 11:33 a.m.)

20 MR. TUFTS: For the record, I'm playing the
21 audio recording that is on the disk marked as Exhibit
22 7.

23 Good afternoon. This is George Hepburn. It
24 is Saturday afternoon, August the 3rd. I have some
25 very important information to get across to the

1 management team, and this will be -- my advice is to
2 listen to this a couple of times so that you hear the
3 words and get the best understanding of the situation
4 the way it actually is.

5 It's not a well-defined situation. There are
6 certain aspects that are well defined and certain
7 things that are going to play out over the next few
8 days as I get more information from my legal team,
9 actually, that is working to help us with this, and
10 it's got to do with the banking.

11 BB&T, and I'm certain you are well aware
12 because of prior messages over the past two years,
13 is -- is turning up the pressure to the fullest extent
14 possible to get repaid every dime that they are owed as
15 quickly as possible.

16 And what that is resulting in is they've
17 actually taken the position that all the money we are
18 putting in to the bank at BB&T, they are just taking it
19 and paying down the line of credit that we have. That
20 is a nine-million-dollar line of credit.

21 So in the last three days, they have actually
22 gotten close to a million dollars paid back, and the
23 11.4 million that we once owed them that was on a
24 steady pay-down is now down to a little more than \$10
25 million.

1 As you might imagine, if they keep doing
2 that, they will get paid back very quickly, because we
3 collect five to \$6 million a month. And if they keep
4 doing that, they will get their money back in 60 to 90
5 days, but no checks will get paid. So that's not a
6 scenario that is going to be able to work.

7 Lo and behold, they did, in fact, start
8 bouncing checks, I just saw that this morning. When I
9 looked at the bank reports, they started bouncing all
10 the checks that were written that had not yet been paid
11 through Thursday and Friday. They paid a few on
12 Friday, and they paid everything through Wednesday that
13 was presented.

14 And then Thursday, they made some payments,
15 and yesterday they made some. But then they stopped
16 paying. And it certainly isn't for a lack of cash or a
17 lack of us being profitable. It's just they have run
18 out of patience because they thought that by now, that
19 company I have talked about, MidCap Financial, would
20 have resulted in a refinance.

21 And they, unfortunately, have a very
22 destructive, irrational, and I have to use the word
23 evil, person in the name of Eric Hubbard who is in
24 charge of the account down in Atlanta, Atlanta,
25 Georgia. Now, he is in charge of the account, and he

1 doesn't care at all about what is happening, other than
2 just he needs to get the money paid back and he's run
3 out of patience.

4 He's run out of patience because we have been
5 working hard to be refinanced, and we have, I can tell
6 you every effort has been expended to take the debt
7 that we owe to BB&T and have that paid by another
8 lender.

9 But, unfortunately, with the presence of the
10 Department of Justice having this whistleblower suit
11 present and not being able to settle it out of court,
12 which I made a substantial offer to the federal
13 government to settle out of court to get them to just
14 go away, without that out of the way, no other person,
15 other than friends and family, would step up and lend
16 me or the company \$11 million, knowing that that
17 lawsuit is pending.

18 Because potentially, that lawsuit could
19 result in 10, 15, \$20 million owed. It's theoretically
20 possible. My opinion, and the opinion of my lawyers,
21 is it's not going to be anywhere near that, and in my
22 opinion, it's going to be zero because there is no
23 false claims that we've ever submitted. That means you
24 intentionally defraud Medicare. And we have never,
25 ever done that.

1 But that's a battle that is going to be
2 played out down the road. Unfortunately, that battle
3 is going to be played out in three to four or five
4 months. And BB&T has run out of patience.

5 Now, why? I don't know. I don't know how
6 they operate, unless these federal regulators or
7 something that is causing irrational destructive
8 behaviors to occur in the banking industry when you are
9 in a category that we are in, which is, you know, we
10 are not bad. We are good.

11 But according to the bank, we are in their
12 workout department. Once you get in there, they want
13 you to pay them back. If you put -- God, if you put a
14 reckless person in charge of the account -- and by the
15 way, I was told by a couple legal people and some other
16 bankers that this department was newly formed by BB&T
17 about two years ago, and that, quote, they don't know
18 what they are doing, end quote.

19 But we are subjected to it. And maybe this
20 will come out in court eventually so that they get
21 their hands slapped real hard, and I'm going to try to
22 do that. I do have a legal team working on this, and a
23 good one, that is looking to stop them from this
24 destructive behavior of not giving any money back to us
25 for all the money that's paid in to the line of

1 credit -- excuse me -- paid in to their bank. They
2 just take it all and pay the line of credit down.

3 Obviously, unless we do something else, we
4 are not going to be able to keep operating as a
5 business if I just let that play out. So there are two
6 approaches. One, I met with a group of lawyers Friday
7 and they are looking at it, and I'm going to get an
8 opinion Monday, that will say whether we can go in to
9 court and have a good chance of getting a court
10 injunction to impose a -- what I had proposed was a
11 12-month payout, because I knew BB&T was not satisfied
12 with just getting the \$300,000 a month from us in
13 payments, which we have made like clockwork, steady
14 Eddie, never missed a payment, never late, paid the
15 interest, 100,000 interest a month, 200,000 in
16 principal, close to that.

17 And for years -- well, it has been four
18 years, we have been steady Eddie. As I may have
19 mentioned to you before, we owed 18 million and it's
20 down to 10 and a half today. It has been steady. It
21 was 11.4 on a regular basis. Then they swiped out 900
22 to a million dollars, 900,000 to a million dollars in
23 the past three days, because that is how much we have
24 collected between Wednesday, Thursday and Friday. They
25 just swiped swipe it out and pay down the line of

1 credit.

2 So that is kind of -- that's where we are.

3 Now, back to -- we can't operate this way, of course.

4 I have got plans to avert and minimize the damage that
5 they are now imposing. I have got the legal team on
6 it. We hope that Monday -- I hope and pray that I will
7 be able to go in court and pose what they agreed to,
8 which is if MidCap doesn't come through with the
9 financing, that they would agree to what I consider a
10 harsh repayment 12 months, a 12-month repayment plan,
11 where I am paying them almost a million dollars a
12 month. It actually starts out smaller and then it
13 ramps up. And we can do that.

14 With that, however, we are still going to
15 have to go through layoffs, and it would be probably
16 200 people that we would have to lay off. And that
17 would be a layoff that if that scenario plays out where
18 we get a court injunction on, you know, this week
19 sometime and we lay off 200 people, that would be a
20 layoff that I would not be saying: Hey, we are going
21 to call you back.

22 We would just pick the people, there are 661
23 employees at Dynasplint today, and there would be 200
24 laid off and then we see how we go, you know, within a
25 year. I want to make sure we pay them back on time if

1 this court injunction works, this effort. I will find
2 that out Monday whether that is going to be a ploy that
3 can be quickly engaged.

4 Now, if that doesn't happen, then it goes to
5 Plan B. Plan B is very destructive but not completely
6 destructive. It's just -- it's hurtful. And that
7 would be a much larger layoff that I then would declare
8 is a temporary layoff, temporary meaning three to five
9 months. There will be a three- to five-month layoff of
10 a lot of people. It might be up to 500 people.

11 And over that next ensuing weeks and several
12 months, in three to four months, we would have enough
13 money coming in from the work we've already done, the
14 good work that you guys have already done, and the
15 billings that would continue from the 30,000 units that
16 we would then still have to bill for, which would stay
17 in rent for five months. And also I would keep
18 probably all the President's Club sales -- sales
19 consultants.

20 And then some of the sales managers that are
21 getting this message would have to become sales reps.
22 The regional sales managers and any divisional, and I
23 don't think this is going to the regionals at this
24 point -- forgive me if it is or if it isn't --
25 eventually, you can convey this to them because

1 everybody needs to be on the same page, I just don't
2 want to give a message that I then will give another
3 message Tuesday with the final game plan.

4 I'm prepping you now because checks are
5 bouncing, and, you know, we had to cancel the training
6 that was occurring in Annapolis. That is raising a lot
7 of feathers wondering what is going on. So I have to
8 give you some information here.

9 I'm giving you everything I have. I hope you
10 just fully understand it.

11 But Plan B -- Plan A is we would have to lay
12 off 200 people anyway and pay them back in 12 months.
13 That is if I can get the court injunction and that
14 works, and they are forced to accept what they already
15 agreed to.

16 See, this 12-month plan was laid out as kind
17 of like a-worst-case scenario plan, and they adopted
18 it, said they would. Now they are not abiding by it.
19 So I'm going to sue the bank. But for right now, I
20 just want to get a court injunction saying yes, they
21 will, they have to abide by it.

22 It's in writing, and my one lawyer said yeah,
23 this is the operative document for repayment, but that
24 still requires 200 people to be laid off. Just keep
25 that in mind, if you can keep that thinking going on.

1 I have talked to my accountant who has been with me for
2 30 years and he said: George, in the end, you will be
3 stronger when you come out of that. Yes, and we will
4 be debt free.

5 That's good because I spend about one and a
6 half million in interest and fees a year on this debt.
7 Because they have raised the interest rates. The fees
8 are terrible. They have just been ripping us off.
9 That will be going away.

10 Then if that doesn't work though, if I can't
11 get the court injunction, we have got to resort to Plan
12 B which is the harsher temporary layoff. I have to say
13 temporary because -- for a lot of reasons. But let's
14 just look at it that way.

15 It is a temporary layoff. Everybody that is
16 laid off would be welcome to come back once the bank
17 debt has expired. And that is why I would do the high
18 number to ensure getting this debt paid back and I have
19 done the math and -- well, I have worked over with Matt
20 Petty, Doug Pitts, Marsha, I have included Jonathan
21 Shopp and Jim Shocky.

22 It works. It works to do it that harsh and
23 get that debt paid off, and then we are out of debt and
24 one huge problem goes away, and the bigger, more
25 dangerous one actually.

1 Then we still have to deal with the
2 Department of Justice, but that will play out over
3 many, many months, and I'm firm in thinking that that
4 will be okay.

5 So it's -- these two things are related, of
6 course, because with the Department of Justice there,
7 it's preventing the refinance. It's not making banks
8 feel comfortable. But I'm telling you this behavior
9 that BB&T is doing is destructive and in violation, I
10 believe, of federal good faith lending practices. And
11 I'm going to sue the bank for this.

12 But first things first, we've got to survive.
13 What I will do is I have other money from my retirement
14 account that I'm going to take out and continue to
15 operate the business. We will replace all the bounced
16 checks through this week, and we will start operating
17 out of a different bank. And that's what I'm going to
18 do.

19 It's no secret. Don't tell too many people
20 because they are going to try to stop this, BB&T will.
21 I'm going to operate out of Wells Fargo for a while,
22 and then I will operate out of a different bank. I'm
23 just going to have to do what I have to do until they
24 are paid in full or a court injunction stops, and we
25 will just pick up the pieces and go.

1 Business will be hurt, but our product line
2 is still going to be needed six months or even a year
3 for whatever part of the lost business we have to
4 incur, because we are the dominant player, and things
5 aren't going to change that fast.

6 So we got to get through this period where
7 this irrational, terrible bank is taking this harsh,
8 totally uncalled for action.

9 That is the story. That is what is
10 happening. I hope I have explained it enough. I know
11 there are going to be a lot of other questions. But I
12 want you to know why we had to cancel the training and
13 how I am going to approach getting those checks that
14 are going to bouncing paid for, and what the bank's
15 actually doing.

16 They are just taking all the money they can
17 and paying down the line of credit. Once it's done to
18 zero, then there is no more action. The debt has to be
19 repaid. It's just they are wanting to be repaid
20 tomorrow. They are doing everything they can to do
21 that.

22 I have put everything behind this. I have a
23 house on the line. My lawyer did say: You don't have
24 to worry. Your house isn't going to be taken away, my
25 one lawyer. The laws are such it's hard and the bank

1 will be paid out by then.

2 I have played in good faith with them. I've
3 dealt straight up and given them every security
4 possible. The collateral is more than double the debt,
5 and yet it's still not good enough. Shame on BB&T.

6 So that's the message. And I will be in
7 Monday and I will be at the phone for anybody who wants
8 to speak. Take care. Have a good weekend I know this
9 isn't exactly going to light up your weekend delight.

10 But let's deal with it. Thank you. And keep
11 working the best you can. Thank you so much. Bye-bye.

12 Are you okay do you need a break?

13 THE REPORTER: No. I'm fine.

14 BY MR. TUFTS:

15 Q. Mr. Hepburn, is that an accurate recording of
16 the call or message you left --

17 MR. SHAFFER: Objection to the form of the
18 question.

19 BY MR. TUFTS:

20 Q. -- on August the 3rd, 2013?

21 MR. SHAFFER: Lack of foundation. You can
22 answer.

23 A. It seemed accurate to me.

24 BY MR. TUFTS:

25 Q. Can we stipulate that this transcript

1 A. I don't recall.

2 Q. On August 6th, 2013, you laid off 500 DSI
3 employees. Is that correct?

4 MR. SHAFFER: Objection to the form of the
5 question.

6 A. I don't believe that's accurate.

7 BY MR. TUFTS:

8 Q. Did you ever tell BB&T that you laid off 500
9 employees of DSI on August 6th, 2013?

10 A. I may have as an estimate.

11 Q. What was that estimate based on?

12 A. An assumption of laying off about two-thirds
13 of the people.

14 Q. When was it first decided this layoff would
15 be done?

16 A. August 3rd, Saturday, August 3rd.

17 Q. Who made the decision?

18 A. I did.

19 Q. How was the layoff implemented?

20 A. It was implemented by conducting a meeting at
21 5 p.m. Monday, August 5th, by teleconference and on --
22 in person for those managers that could be in person,
23 and it was discussed at that time what we had to do in
24 order to pay BB&T back in three months.

25 And they were instructed -- the managers were

1 instructed to identify a rough number of about 180
2 people that they wanted to keep, and then everybody
3 else would be let go on a planned temporary layoff for
4 most of them, but not all of them.

5 Q. Was it only managers that attended the
6 teleconference or in-person meeting on August 5th?

7 A. I believe so.

8 Q. Did you distribute any termination notice?

9 MR. SHAFFER: Did he personally?

10 MR. TUFTS: Yes.

11 MR. SHAFFER: Did you send any termination
12 notices to any of the employees who were terminated on
13 August 6th? Did you personally?

14 THE WITNESS: I don't recall. Probably. I
15 don't recall. I may have, but I know most of them are
16 not --

17 MR. TUFTS: This was -- what I have provided
18 to you is marked as Exhibit 1 to the deposition of Dana
19 Lynn Ridge. It's a two-page letter dated August 6,
20 2013, addressed to Dynasplint colleagues.

21 THE WITNESS: Yes.

22 BY MR. TUFTS:

23 Q. Is that your signature on the second page?

24 A. Yes.

25 Q. Did you draft this letter?

1 A. Yes.

2 Q. When did you draft it?

3 A. Probably that morning.

4 Q. The morning of August 6th?

5 A. Probably.

6 Q. Did you have any assistance from anybody in
7 drafting this letter?

8 A. I probably had a couple people read it.

9 Q. Who did you have read it?

10 A. I don't recall.

11 Q. Did you have any attorneys read it?

12 A. I doubt it.

13 Q. And did you distribute this letter?

14 A. I did.

15 Q. Who did you distribute it to?

16 A. I gave it to all the managers and they gave
17 it to the people.

18 Q. Did you e-mail this letter to anybody?

19 A. I didn't -- I may have.

20 Q. Who did you e-mail it to?

21 A. I don't recall. It certainly would have been
22 to people outside of my direct reach.

23 Q. Was this letter delivered to every DSI
24 employee that was laid off on August 6th, 2013?

25 A. It was intended to be.

1 Department of Justice regarding the qui tam litigation?

2 A. Yes.

3 Q. Who was conducting the negotiations and
4 discussions on behalf of DSI with the Department of
5 Justice in July of 2013?

6 A. Alston & Bird and probably Ted Kang.

7 Q. Were you in regular communication with
8 Mr. Kang about that?

9 A. I'm certain I was.

10 Q. I don't want you to tell me anything that
11 Mr. Kang told you. But what was your understanding
12 with respect to the status of the settlement
13 negotiations with the Department of Justice after July
14 10th, 2013?

15 A. We were waiting to hear back from them to
16 accept an offer we had made.

17 Q. Did you ever -- did you ever come to
18 understand whether the government was willing to enter
19 in to a negotiated settlement with respect to the qui
20 tam case in July of 2013?

21 A. They were willing to enter into negotiation.

22 Q. When did you -- did you -- did there come a
23 time in July of 2013 when you believed that DSI's
24 ability to enter into a negotiated settlement with the
25 Department of Justice would not come to fruition on or

1 before July 31st, 2013?

2 A. No.

3 Q. Okay. Do you remember telling Mr. Hubbard in
4 late July 2013 that you didn't think the MidCap loan
5 refinancing would close by the July 31st, 2013,
6 deadline set forth in the then extant forbearance
7 agreement with BB&T?

8 MR. TUFTS: Objection.

9 A. I believe I do recall telling him that we
10 wouldn't close in time for July 31st.

11 BY MR. SHAFFER:

12 Q. Okay. Did you have an understanding in July
13 of 2013 as to when BB&T expected the MidCap Financial
14 loan closing to close by?

15 A. Yeah. They thought it would close by July
16 31st.

17 Q. And did you come to understand at some point
18 in time in July of 2013 that that was not going to
19 occur?

20 A. I believe it was the last few days, like the
21 last two days.

22 Q. Okay. So -- and did you do anything at that
23 time to try to reach out to Mr. Hubbard to report to
24 him on your understanding as to whether it was feasible
25 to complete the MidCap Financial loan closing by July

1 31st, 2013?

2 A. I believe I did.

3 Q. And did you ever hear back from Mr. Hubbard
4 about that?

5 A. No, I did not.

6 Q. Did you have an understanding at that time as
7 to what Mr. Hubbard's plans were or what BB&T's plans
8 were with respect to the loans that would mature on
9 July 31st, 2013?

10 A. My expectation was they would just move ahead
11 like they always did and give us another forbearance
12 agreement.

13 Q. Were you still hopeful that you would be able
14 to reach a negotiated settlement with the Department of
15 Justice sometime after July 31st, 2013?

16 A. Absolutely. Yes.

17 Q. When was your first -- when was the first
18 date when you realized that BB&T was not willing to
19 continue to forbear or not collect on its loans to DSI?

20 A. Not absolutely until the morning of Saturday,
21 August 3rd.

22 Q. And what transpired on Saturday, August 3rd,
23 that led you to believe that BB&T was not willing to
24 continue to forbear on collection of its loans to DSI?

25 A. Every check that was presented, including a

1 payroll check -- excuse me -- including our payroll for
2 Friday, August 2nd was returned and did not go through
3 the bank. No checks whatsoever went through the bank
4 account on August 3rd, meaning they all bounced.

5 And I knew then that nothing was going to be
6 ever paid again out of BB&T willingly unless I got a
7 court order to stop it.

8 Q. And did you have some notice or indication
9 that there was some irregularity with respect to the
10 banking relationship between DSI and BB&T a few days
11 prior to Saturday, August 3rd?

12 A. Yes.

13 Q. What did you discover and when?

14 A. I discovered on the morning of August 1st,
15 Thursday, August 1st, that some of the checks were not
16 paid and they were returned, but some of the checks
17 appeared to go through. So it was not clear to me what
18 was happening.

19 Q. And the checks that went through, did you
20 notice when they had been presented to the bank for
21 payment?

22 A. Yes. They had been presented that night,
23 July 31st.

24 Q. Okay. And were there any checks that were
25 presented for payment after July 31st for which the

1 bank did not dishonor the checks?

2 A. Correct. One more day.

3 Q. There were checks presented on August 1st
4 that you believe had been paid?

5 A. Yes.

6 Q. There were checks that were presented on
7 August 1st that were not paid. Is that correct?

8 A. Yes.

9 Q. The checks that were dishonored on August
10 1st, were they large checks or do you remember anything
11 about the size of the checks?

12 A. I don't remember anything about the size of
13 the checks.

14 Q. Did you continue, after July 31st, 2013, to
15 attempt to reach a resolution with respect to the qui
16 tam litigation with the government?

17 A. Yes.

18 Q. And have those efforts continued since then?

19 A. Yes.

20 Q. You indicated in your letter to your
21 employees on August 6th, 2013, that you had -- you were
22 hopeful or that your plan was to recall or start
23 recalling some of the laid-off employees, I believe as
24 of November 2013. Do you remember that?

25 A. Yes.

1 A. I recall August 10th being a date, something
2 around that time.

3 Q. You indicated in your -- in your -- in your
4 prior communications in August 2013 that you were
5 consulting with lawyers about whether BB&T's sweeping
6 of the accounts would be stopped?

7 A. Correct.

8 Q. Do you remember that testimony? Now, did you
9 have an understanding at any point in time as to
10 whether or not BB&T could legally attach the
11 receivables that were being paid to DSI by Medicare?

12 A. No. I thought that was illegal.

13 Q. When you said that you were consulting with
14 lawyers in early August 2013, do you know who you were
15 consulting with at that time?

16 A. Yes.

17 Q. Do you know who it was?

18 A. Andrew Graham.

19 Q. Did you come to be represented by Mr. Graham?

20 A. No.

21 Q. When you wrote your letter of August 6th,
22 2013, to employees notifying them that DSI would have
23 to implement certain layoffs within the company, did
24 you have an understanding of the precise number of
25 people that would be -- that you hoped to recall later

1 on?

2 A. I had an idea.

3 Q. Okay. But did you know the exact number?

4 A. No.

5 Q. What did that depend on?

6 A. Getting BB&T paid in full by a certain time
7 period.

8 Q. Okay. And did you have an expectation as of
9 August 6th, 2013, with respect to that which did not
10 come to fruition as a result of other events?

11 A. Yes.

12 Q. What was that?

13 A. That was the beginning of November, that I
14 would have them all paid off by October 31st.

15 Q. What happened in between August 6th, 2013,
16 that caused your original idea that you would be able
17 to begin calling back employees as of November, what
18 happened during that time period to change that plan?

19 A. Medicare suspended our payments.

20 Q. You were asked some questions about
21 communications that you had with BB&T in February of
22 2013 with respect to what you testified to as Plan B.
23 Do you remember that testimony?

24 A. Yes.

25 Q. You indicated to Mr. Hubbard in February of

1 2013 that one of the potential plans of action for the
2 company would be to lay off some employees as of
3 that -- at some point in time, correct?

4 A. Correct.

5 Q. You weren't -- were you planning to lay off
6 employees in February of 2013?

7 A. No.

8 Q. What you and Mr. Hubbard were talking about,
9 was that a theoretical discussion based on some future
10 events?

11 A. No.

12 Q. Did you know in February of 2013 that it
13 would be necessary for you to lay anyone off?

14 A. No.

15 Q. What were you telling Mr. Hubbard about a
16 Plan B to lay off employees in February of 2013? Why
17 were you telling him about that?

18 A. Because his boss, Richard Spencer, indicated
19 to me that if we could get refinanced by the end of
20 June, everything would be fine. And if not, then he
21 would want to have that Plan B put in to effect.

22 Q. So is it correct that the Plan B was a future
23 contingency plan in the event certain things didn't
24 occur?

25 A. Correct.

1 Q. Did that contingency plan get superseded by
2 subsequent events after that date?

3 A. Could you explain that again?

4 Q. Sure. The Plan B, as I understand it, was
5 that a contingency plan that would occur if the BB&T
6 loans did not get extended past June 15th of 2013?

7 A. Yes.

8 Q. And they did get extended beyond that date?

9 A. That's correct.

10 Q. So that Plan B, was that superseded by events
11 that occurred after June 15th, 2013?

12 A. Yes, it was.

13 Q. Did that make the Plan B no longer operative?

14 A. For that time period, correct.

15 Q. The reason why it was no longer operative is
16 because BB&T continued to forbear on the loan. Is that
17 correct?

18 A. That's correct.

19 Q. They continued to forbear through July 31st,
20 2013?

21 A. That's correct.

22 Q. Your understanding was by agreeing to forbear
23 through July 31st, 2013, they could not and would not
24 take any action with respect to the loans, correct?

25 A. Absolutely.

1 Q. How often was BlackBriar in your -- DSI's
2 offices in June and July of 2013?

3 A. I believe they were there at least one day a
4 week, sometimes two.

5 Q. What was your understanding of what
6 BlackBriar was doing?

7 A. They were there to report back to the bank
8 what was happening from an accounting standpoint.

9 Q. Do you recall in July of 2013 if BlackBriar
10 Advisors was making inquiries of DSI with respect to
11 the status of the negotiations that were then ongoing
12 with the Department of Justice regarding the settlement
13 of the qui tam litigation?

14 A. I don't recall that.

15 Q. Do you recall whether in July of 2013 there
16 was a delay in hearing back from the Department of
17 Justice about whether it would be feasible to enter
18 into a negotiated settlement on an inability to pay
19 basis?

20 A. I recall that there was a delay.

21 Q. Do you remember whether DSI was required, as
22 part of the ongoing negotiations with the Department of
23 Justice in the qui tam case, whether it was required to
24 provide financial information and other information to
25 the Department of Justice to demonstrate DSI's

1 inability to pay a substantial amount of money?

2 A. I recall that.

3 Q. And do you recall whether in July of 2013,
4 the Department of Justice lawyers with whom your
5 counsel was negotiating, whether they ever expressed a
6 desire to interview MidCap Financial?

7 A. Yes.

8 Q. And do you remember why they wanted to do
9 that?

10 A. I don't recall why.

11 Q. Do you remember when that occurred?

12 A. It was in July, I believe.

13 Q. Okay. And do you remember whether MidCap
14 Financial agreed to do that?

15 A. I recall they refused to do it.

16 Q. Okay. Do you know why?

17 A. They thought it was inappropriate for them in
18 any way to talk to the Department of Justice.

19 Q. Did they at that time -- was it your
20 understanding that they were still willing to proceed
21 with a refinancing in the event that the qui tam case
22 could be resolved?

23 A. Absolutely. They were going to go forward,
24 yes.

25 Q. Now, I want to redirect your attention to

1 Hepburn 17, which is a July 19th, 2013 e-mail from
2 Mr. Ciatto.

3 Do you see that?

4 A. Yes.

5 Q. In that, Mr. Ciatto refers to an agreement to
6 settle the OIG situation for an amount of \$2 million or
7 less.

8 Do you see that?

9 A. Yes.

10 Q. Is that different from what you had been told
11 earlier by MidCap Financial?

12 A. Yes.

13 Q. What had they told you before?

14 A. They told me if we could get it settled for
15 three to four million, they could move ahead and it
16 wouldn't be any problem.

17 Q. Did they indicate in July of 2013 why the
18 amount of the settlement had changed?

19 A. They may have.

20 Q. Do you remember what they told you?

21 A. No, but I might have an idea.

22 Q. I don't want you -- as of July 19th, 2013,
23 was DSI still pursuing a settlement of the qui tam
24 litigation with the Department of Justice in an amount
25 of \$2 million or less?

1 A. Yes.

2 Q. And did those efforts continue beyond July
3 19th, 2013?

4 A. Yes.

5 MR. SHAFFER: I have no further questions
6 thank you.

7 MR. TUFTS: Just a few follow-ups. We are
8 almost done.

9 FURTHER EXAMINATION BY COUNSEL FOR THE PLAINTIFFS:
10 BY MR. TUFTS:

11 Q. Mr. Hubbard -- I'm sorry. I know you don't
12 like being called that. Mr. Hepburn -- I apologize --
13 did you ever tell BB&T or Mr. Hubbard that MidCap told
14 you that they could close the refinancing deal with ten
15 days of you settling the DOJ litigation?

16 A. Could you repeat the question? I'm sorry.

17 Q. Sure. Did you ever tell BB&T or Mr. Hubbard
18 that MidCap had told you that it could settle the
19 refinancing deal, close it, within ten days of the qui
20 tam action being settled?

21 A. I would be shocked if I did not.

22 Q. That is a yes?

23 A. I believe I did.

24 Q. So when did you tell them that?

25 A. At any time that they would have asked.

1 Q. Do you recall the first instance when you
2 told them that?

3 A. No. No.

4 Q. So if it would -- did you believe that, that
5 MidCap would be able to close within ten days of you
6 settling the qui tam action?

7 A. Absolutely, yes.

8 Q. What was the status of the negotiations of
9 the qui tam action as of July 20th?

10 A. Ted Kang was pounding on their doors to try
11 to get them to give an answer.

12 Q. Was there any answer around that time?

13 A. I don't know. I didn't get an answer
14 conveyed back to me.

15 Q. What about over the next couple of days,
16 20th, 21st, 22nd, was there any movement in the
17 settlement negotiations during that time period?

18 MR. SHAFFER: I'm going to object to that
19 question. I mean, you can ask him if he had an
20 understanding as to what the status of the negotiations
21 were, but I don't think you can ask him a question that
22 is, at least implicitly, designed to find out something
23 that was told to him by his lawyer.

24 So I would object on that basis.

25 BY MR. TUFTS: